

### REMARKS

Applicant has carefully studied the non-final Examiner's Action mailed November 4, 2004 and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings that correspond to the centered headings employed by the Office, to ensure full response on the merits to each finding of the Office.

#### *Claim Rejections - 35 U.S.C. § 102*

Applicant acknowledges the quotation of 35 U.S.C. §112, second paragraph.

Claims 5-6 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claim 5 is deemed indefinite by the recitation "further comprising shoulder panels" which are formed of absorptive materials. Since the shoulder panels were claimed in claim 1, from which claims 5 and 6 depend, it is unclear to the Office if the shoulder panels are the same. Claim 6 has been deemed indefinite for similar reasons regarding "chest panels." Applicant appreciates the ambiguity pointed out by the Office and has amended claims 5 and 6 accordingly. In light of the amendment to claims 5 and 6, Applicant believes the ambiguity has been corrected and the rejection is now moot.

#### *Claim Rejections - 35 U.S.C. § 102*

Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

It is well settled that "anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration."<sup>1</sup> The single reference must also disclose each element of the claimed invention "as arranged in the claims."<sup>2</sup> It is not enough that the reference teach all the claimed elements in isolation, or in a different relation. Therefore, if the prior art

<sup>1</sup> See *W.L. Gore & Assocs. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303,313 (Fed. Cir. 1983).

<sup>2</sup> See *Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1542, 221 USPQ 481, 485 (Fed. Cir. 1984).

reference includes all the elements that are claimed, if the arrangement of the claimed elements is different from the arrangement of the prior art elements, anticipation cannot be found.<sup>3</sup>

Accordingly, Applicant respectfully presents the following remarks with regard to the cited prior art:

**U.S. Patent no. 2,857,599 to *Wallace***

Claims 1, 5, and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Wallace*. The '599 patent does not teach, describe, or suggest a protective garment having sleeve panels extending from the lateral end of an associated shoulder panel and back panel, where each sleeve panel extends partially over the user's upper arm thereby providing additional protection. In contrast, *Wallace* teaches that the central edges of the body portion (24) such that they "overhang the upper end of the arm giving an outwardly flared appearance." Col. 2, lines 21 – 26. Since *Wallace* does not contain this element as embodied in claim 1, as amended, it cannot be said that it anticipates claim 1. Since claims 5 and 6 depend from claim 1, and thereby contain all elements therein, they are patentable over the cited reference as a matter of law.

**U.S. Patent no. 2,258,946 to *Chadwick***

Claims 1, 3, 5, and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by *Chadwick*. The '946, like the '599 patent, does not teach, describe, or suggest a protective garment having sleeve panels extending from the lateral end of an associated shoulder panel and back panel, where each sleeve panel extends partially over the user's upper arm thereby providing additional protection. The side edges of the '946 patent "gradually recede inward at a smooth curvature toward, and merge with, the outer edges of the narrower shoulder portions." Col. 2, lines 21 – 24. Since the '946 patent does not contain this element as embodied in claim 1, as amended, it cannot be said that it anticipates claim 1. Since claims 3, 5, and 6 depend from claim 1, thereby incorporating all elements therein, they are patentable over the cited reference as a matter of law.

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<sup>3</sup> Donner, Ira H.; *Patent Prosecution; Practice and Procedure Before the U.S. Patent Office*; BNA Books, 1999

**U.S. Patent no. 3,514,788 to Miller**

Claims 1 through 3, 5, and 6 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Miller*. The '788 patent does not teach describe or suggest a protective garment wherein a space is defined between each chest panel and the back panel. In contrast, the '788 patent states:

Further, the front half or section 13 is joined along its outer side edge to the adjacent side edge of the back part 11, as by a seam 19, while the front half or section 14 is joined along its outer side edge by a seam 20 to the adjacent side edge of the back part 11. Col. 2, lines 43-47.

Since the '788 patent does not contain the element of a longitudinally defined space between the chest panels and back panel, as embodied in amended claim 1, it cannot be said that it anticipates claim 1. Since claims 2, 3, 5, and 6 depend from claim 1, thereby incorporating all elements therein, they are patentable over the cited reference as a matter of law.

**U.S. Patent no. 5,848,439 to Huseth et al.**

Claims 1-3 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Huseth et al.* Applicant respectfully disagrees with the Office's characterization of the elements of the '439 patent. For example, the Office asserts that the protective garment of the '439 patent comprises "a back panel, a pair of shoulder panels extending from the upper edge of the back panel, each shoulder panel having a medial end and a lateral end."<sup>4</sup> However, the '439 patent discloses a cape, made up of a unitary structure with no discernable panels whatsoever. For example, claim 1 describes the body of the garment simply as "a drape portion having a split front panel and a closed rear." Col. 3, line 35. A review of the figures also indicates that no discernable sleeve panels exist as the front is in uniform and indivisible contact with the rear. As mentioned, *supra*, the mere presence of the claimed elements in a reference is not sufficient to find anticipation where the elements are not "arranged as in the claims."<sup>5</sup>

Notwithstanding the characterization of the elements of the '439 patent, there is no longitudinal space defined between the front of the garment and the rear. The front portion of the garment forms a continuous and unitary whole with the back portion. Since the element of a

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<sup>4</sup> Office Action, Page 5

<sup>5</sup> See *Lindermann Maschinenfabrik GmbH*, 221 USPQ 481, 485

longitudinal clearance defined between the chest and back panels has been incorporated into claim 1 of the instant application and is absent from the '439 patent, it cannot be said that the '439 patent anticipates the instant invention.

**U.S. Patent no. 2,794,985 to *Brennish***

Claims 1 through 2 and 5 through 7 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Brennish*. The instant invention differs from the '985 in many aspects, the most apparent of which being that the chest panels have no discernable lateral sides, as expressly claimed in claim 1. The sleeve panels of the instant invention, as well as the longitudinally define space between the chest and back panels, allows freedom of movement while caring for an infant. For example, in the embodiment of the '985 patent shown in Figs. 4 and 5, if a user was holding an infant and moved either arm laterally then the front of the garment would move accordingly. This would either require movement of the infant, or prevent the user from raising their arm. Since the sleeve panels of the instant invention are not attached along their length to the chest panel, movement of the arm does not result in corresponding movement of the chest panel. Accordingly, the '985 patent does not recite the necessary elements of (1) sleeve panels which depend from the shoulder panels and back panel, or chest panels with (2) lateral edges which (3) define a clearance between the chest panels and the back panel. Where expressly claimed limitations are not present in the prior art, anticipation cannot be found.

**U.S. Patent no. 5,572,740 to *Geniesse***

Claims 1 and 3 through 6 stand rejected under 35 U.S.C. 102(b) as being anticipated by *Geniesse*. The '740 patent does not teach, describe, or suggest a protective garment having sleeve panels extending from the lateral end of an associated shoulder panel and back panel, where each sleeve panel extends partially over the user's upper arm thereby providing additional protection. Since the '740 patent does not contain this element as embodied in claim 1, as amended, it cannot be said that it anticipates claim 1. Since claims 3 through 6 depend from claim 1, and thereby contain all elements therein, they are patentable over the cited reference as a matter of law.

**Conclusion**

Entry of a Notice of Allowance is solicited. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

Dated: February 4, 2005

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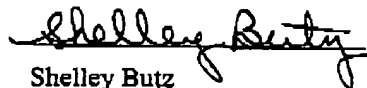
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**CERTIFICATE OF FACSIMILE TRANSMISSION**

(37 C.F.R. 1.8 (a))

I HEREBY CERTIFY that this Amendment A, including Amendments to the Claims and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3765, Attn: Amy B. Vanatta, (703) 872-9302, on February 4, 2005.

Dated: February 4, 2005

  
Shelley Butz